

Timeliness and Funding of Air Quality Permitting Programs

Follow-up Review
June 2004

Office of Performance Evaluations
Idaho State Legislature



Report 04-03F

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Rakesh Mohan
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June 4, 2004

Members
Joint Legislative Oversight Committee
Idaho State Legislature

At your direction, we have completed the second follow-up review of the Department of Environmental Quality's air permitting programs.

This follow-up review assessed the department's progress in implementing the six recommendations that had not been fully implemented at the time of our last review. Three of these recommendations are now fully implemented, and others are partially completed.

We appreciate the department's cooperation during this review. Ned Parrish (team lead) and Chris Shoop of the Office of Performance Evaluations completed this follow-up review.

Sincerely,

A handwritten signature in black ink that reads "Rakesh Mohan".

Rakesh Mohan

Timeliness and Funding of Air Quality Permitting Programs

Follow-up Review June 2004

Summary

Our 2002 report on the Department of Environmental Quality's air quality permitting programs contained nine recommendations. In a 2003 follow-up review, we found the department had implemented three of these recommendations. Since then, the department has implemented three more recommendations. The remaining recommendations are in-process or have been partially implemented, and require additional efforts to ensure program expenditures and funding are at appropriate levels, and staff have adequate guidance for consistent and efficient permit processing.

Background

In June 2002, the Office of Performance Evaluations released a report, *The Department of Environmental Quality: Timeliness and Funding of Air Quality Permit Programs*. The report was requested by the Joint Legislative Oversight Committee because of concerns about (1) the time taken by the department to issue permits to facilities that emit air pollutants, and (2) the cost and funding of permitting programs. The review focused on two types of permits: comprehensive operating permits ("Title V") issued to large sources of pollution and construction permits ("Permit to Construct") required before building or modifying facilities that emit air pollutants.

The report contained nine recommendations to strengthen management of these permitting programs and ensure program expenditures and funding are at appropriate levels. The last follow-up review in February 2003 found the department had implemented the following three recommendations regarding financial management of the Title V operating permit program:

- Improve the program's fee tracking database to help ensure all required fees are paid

- Reconcile transfers from the Air Quality Permitting Fund to actual expenditures to maximize the interest income generated from permitting fees
- Apply indirect costs to the Title V program in a manner consistent with other department programs

This review addresses the remaining six recommendations from the 2002 report. The Department of Environmental Quality's self-assessment of its implementation efforts is provided as Appendix A. Our assessment of the department's progress is provided below.

The Department Has Taken Steps to Improve Permit Tracking Information

Two of the recommendations in the 2002 report called for the department to improve the tracking information used by management to monitor permit-writing efforts. At the time, permit tracking data in both the Title V and Permit to Construct programs was found to be incomplete and inconsistent. The last follow-up review found the department was developing a new centralized database to improve management's ability to track all types of air quality permits. The department then expected the system to be operational by December 2003. While the system still is being developed, it appears to be close to completion. In the interim, program managers are using a spreadsheet-based system for permit tracking. This system contains the types of information that management needs to monitor permitting efforts. Management can use the system to identify the current status of each project and determine whether permits are being completed within established regulatory timeframes.

Status: Both recommendations implemented.

The Backlog in the Construction Permit Program Has Been Eliminated and the Department Has Improved Permit Processing Timeliness

The 2002 report found the department had been slow to issue construction permits, and a backlog of applications awaiting action had developed. Timely issuance of construction permits is important because permit applicants cannot begin constructing new facilities, or make desired changes to existing facilities, until they have obtained a permit. The last follow-up review noted the department had eliminated the backlog, but continued to exceed regulatory timeframes in developing many of these permits.

Our current review found the department has continued to keep pace with permitting requests received and has not experienced a backlog in the past year. In addition, department management reports they have used tracking information to monitor permit development efforts and have emphasized completing permit projects on time. We reviewed tracking information for permit applications received since January 2003 and found the majority of projects have been completed within established timeframes. While a number of projects continue to exceed the regulatory timeframes, the department reports it has opted to give applicants additional time to perform needed application work rather than deny a permit. Overall, the department appears to be improving its compliance with regulatory timeframes for processing construction permits.

Status: Implemented.

Efforts to Address Recommendations Pertaining to Air Quality Fees and Expenditures Have Occurred, but More Detailed Analysis of Fee Levels by the Department Is Needed

In the 2002 report, we provided two recommendations pertaining to the balance between permit fees and program expenditures for both the Title V and Permit to Construct programs:

- Address the imbalance between Title V program revenues and expenditures
- Monitor Permit to Construct fee collections and workload to determine if the fee schedule should be adjusted up or down

Title V

The federal Clean Air Act requires the Title V program be fully funded through fees charged to regulated facilities. As a result, fee revenue must be sufficient to fund the necessary activities of the program.

In the last follow-up review, we reported the department had proposed changes to its fee structure to generate revenue closer to anticipated expenditure levels. The 2003 Legislature approved the fee modification and it went into effect in April of that year. These revised fees, however, have not been in effect for an entire fiscal year and it is not yet possible to assess their adequacy for the program.

While the 2003 fee adjustment was designed to achieve a better balance between program revenues and expenditures, there have been a number of changes in Idaho's Title V program that may warrant further modification of fees. In particular, recent program expenditures have been less than in past years, and the

focus of program efforts has shifted to other activities. Although the fee change was designed to generate an estimated \$1.92 million per year, program expenditures in fiscal year 2003 totaled \$1.77 million, and expenditures for fiscal year 2004 are on pace to be even lower. In addition, the department has now issued most of the initial Title V permits and is beginning to focus on renewing and modifying permits and monitoring facility compliance with permit requirements. Because of these changes, the department needs to assess its future program work activities and reanalyze program resource needs before making any adjustments to its current fees.

The department initiated negotiated rulemaking to review Title V fees in the fall of 2003. In December, the department decided to postpone any rule changes for the present time and observe fee collections and program workload. It is waiting to see whether large annual payments received from the federal Department of Energy's Idaho National Engineering and Environmental Laboratory will be continued, and to get a better sense of workload requirements for activities such as compliance monitoring that will be emphasized in the next phase of the program. The department also reports that revenue generated from fees will decline next year because a provision in rule is scheduled to expire.¹ The department believes that a clear understanding of these circumstances will allow it to more reliably estimate the required fee levels.

Status: In-process.

Permit to Construct

In 2002, the department requested legislative approval to assess fees for the Permit to Construct program. The new fees were intended to help the department keep pace with the construction permit workload, which at that time contained a number of backlogged permit applications. Fee revenue was intended to supplement the federal and state funds already appropriated to support the program.

The department has tracked fee revenues received and reports that permit fees generated \$91,000 in fiscal year 2003, and \$150,750 for the first three quarters of fiscal year 2004. Although fees received have been less than the department originally anticipated, it reports the fees, combined with other program revenues, have been adequate to sustain the program.

Based on our review of program workload, however, reexamination of program fees may be warranted. Since the implementation of new fees, the backlog of construction permits has been eliminated. In addition, the number of permit applications received by the department has decreased from a high of 172 in

¹ IDAHO ADMIN. CODE, 2004, IDAPA 58.01.01.389.07 specifies that emission-based fees paid by Title V facilities must total at least \$1.1 million annually. This provision will expire after 2004 and, based on previous years emissions, the department reports that program revenue will be reduced by approximately \$250,000.

2001 to 70 in 2003.^{2,3} Fees now make up a significant portion of program revenues. For the first three quarters of fiscal year 2004, fee revenues have generated enough to cover more than 40 percent of program costs. Because of these changes, the department should reassess program needs to determine whether fees used to supplement federal and state funding could be reduced.

Status: In-process.

The Department Has Taken Some Steps to Improve Permit Writing, but Does Not Plan to Develop Overall Written Guidance

Because permit writers had expressed that a lack of standardized direction and training on preparing permits factored into the delay of Title V permit issuance, the 2002 report recommended the department develop written standard procedures for permitting staff to follow. At the time of our last follow-up review, the department had taken only limited action in this area, changing its organizational structure to improve oversight of permit writers and committing to develop industry and state-specific guidance as needed.

The department has taken some further action pertinent to this recommendation since the last follow-up review. It has developed additional industry-specific guidance, sent staff to training on a variety of permitting topics, and began documenting certain processes important to permit preparation. However, department officials said the development of any written guidance addressing the overall permit process and activities is not needed because almost all initial Title V permits have been issued.

Nevertheless, we believe written guidance about department processes and procedures—like that developed for the department’s enforcement program—would still be helpful for staff tasked with processing any new Title V applications, and with conducting the permit renewal and modification work that the department notes will be a primary focus of future program efforts. Because the department has taken some steps but does not intend to develop general program guidance, we consider this recommendation to be partially implemented.

Status: Partially implemented.

² Permit to Construct application numbers for 2001 are based on the fiscal year, whereas the 2003 totals are for the calendar year. Because the department began using a new tracking system in January 2003, it provided us information on applications received for the calendar year.

³ The department reports receiving 14 construction permit applications in the first quarter of calendar year 2004.

Appendix A

Department of Environmental Quality

Report of Implementation Efforts



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED

APR 08 2004

PERFORMANCE EVALUATIONS

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Dirk Kempthorne, Governor
C. Stephen Allred, Director

April 6, 2004

Mr. Rakesh Mohan, Director
Office of Performance Evaluations
Idaho State Legislature
Joe R. Williams Building
Lower Level, Suite 10
Boise, Idaho 83720-0055

Re: ***Update on Implementation of Six In-Progress Recommendations from
Office of Performance Evaluation (OPE) Report of June 2002
Department of Environmental Quality (DEQ) Air Quality Program***

Dear Director Mohan:

This letter is in response to your request of March 22, 2004, for an update on Department of Environmental Quality (Department) implementation of six recommendations identified in the Office of Performance Evaluation (OPE) February 2003 *Follow-up Review* to the June 2002 report, ***Department of Environmental Quality: Timeliness and Funding of the Air Quality Permitting Program***. This letter specifically addresses the recommendations contained in Appendix A of the *Follow-up Review*. As such, the Department submits the following:

Recommendation 1. The Department of Environmental Quality should take steps to improve tracking information for Title V permitting projects.

DEQ Action—Facility List. Implemented. The Department has prepared a review of facilities originally thought to be Title V facilities. The review documents the reasons why most of these facilities were removed from the Title V universe. More important, the Department has prepared a list of Title V facilities. This list is updated regularly, based on permit and enforcement actions, to reflect the true Title V universe since January 1, 2003. This list provides a continuously updated record of recent and current Title V facilities, and documents specific reasons why facilities have left the Title V universe since this date.

DEQ Action—Title V Tracking Data. Implemented. The Department has established a spreadsheet-based system to track and record details of Title V application review. The spreadsheet maintains information on the milestones necessary to meet regulatory deadlines. The data are input by the Permit Coordinators – who are directly responsible for permit issuance schedules. The spreadsheet is the only location where permit schedules are maintained – there is no duplicative recordkeeping.

Recommendation 2: The Department of Environmental Quality should develop written guidance that establishes standard procedures for permitting staff to follow when developing permits.

DEQ Action—Guidance: Implemented. This recommendation was first made in the original June 2002 Report, and was based on discussions with permit writers. Since that time, the permitting environment at the Department has changed considerably. OPE's visit to the Department in May 2002 was at a time when the thrust to issue Title V permits was at a peak, and additional technical personnel were assigned to assist existing permit writer ranks. That condition no longer exists. The initial Title V permits have been issued – the recommendation lives on although the underlying problem has been solved. The Department has passed the learning curve in issuance of Title V permits.

If the intent of this recommendation is to promote consistency in permit content, it should be recognized that this goal can be met by other means. The following list provides details on how the Department has met these goals:

1. The format for a Title V permit has been standardized, and has remained essentially unchanged for at least 18 months.
2. The transfer of personnel from Technical Services to the Stationary Source Program Office has provided for better interaction between permit writers and permit coordinators, thereby improving permit consistency.
3. The reorganization of responsibilities within the Stationary Source Program Office has provided for greater familiarity in permit review and, therefore, improved consistency in permits issued.
4. The Department is continuing to issue written internal guidance as needed. The resources used to develop written guidance results in resources not available for work on permits. With resources being tight, a balance must be struck between resources used to review permits and resources used to develop guidance. At present, the Department has established a good balance between permit issuance and development of guidance.
5. The Department remains committed to leveraging available resources by sending staff to training provided by external organizations. It is far more cost-effective for smaller air agencies, as in Idaho; to send staff to established training forums than to develop internal training on all air quality issues.
6. In 2003, EPA conducted a review of Idaho's Title V program. The review found permit consistency to be acceptable, and in no way found permit guidance to be a deficiency.

Recommendation 3: The Department of Environmental Quality should address the current imbalances between Title V program revenues and expenditures, and consider alternative factors, in addition to emissions, as a basis for Title V fees.

DEQ Action—Title V Program Revenues and Expenditures: Implemented. The Department started a negotiated rulemaking in late 2003 in anticipation of revising the Title V rules. A preliminary evaluation of fee receipts and program costs indicate that the current Title V rule is adequate to support the Title V permit program.

Recommendations 4 – 6: As indicated in the February 2003 Follow-up Review, these recommendations have been implemented and are resolved.

Recommendation 7: The Department of Environmental Quality should continue efforts to reduce the permit to construct application backlog and take measures to improve adherence to deadlines established in Idaho Administrative Code.

DEQ Action—Permit Timeliness: Implemented. There is no backlog of PTC applications.

* OPE comment:
See corrigendum
at end of letter.

Most PTC applications are processed within the time frames specified. In those cases where the technical accuracy and completeness of the application, and the complexity of the proposed project can sometimes negatively affect permit timeliness. Quite often, the Department finds, during detailed review, that information submitted by the facility is not adequate to support issuance of a permit. Rather than deny the permit, creating further delay and increased costs for the applicant, the Department normally elects to await additional information and/or analyses from the applicant. In these instances, the Department could deny permits, and thereby improve compliance with ***the Rules for the Control of Air Pollution in Idaho***. However, the Department believes that it is better serving the regulated community and the public by working cooperatively with facilities seeking permits. In cases where permit applicants are unable to supply needed information, permit denial may occur.

Recommendation 8: The Department of Environmental Quality should take steps to ensure the permit to construct data is complete and accurate.

DEQ Action—PTC Tracking Data: Implemented. The Department has established a spreadsheet-based system to track and record details of PTC application review. The spreadsheet maintains information on the milestones necessary to meet regulatory deadlines. The Permit Coordinators – who are directly responsible for permit issuance schedules, input the data. The spreadsheet is the only location where permit schedules are maintained – there is no duplicative recordkeeping.

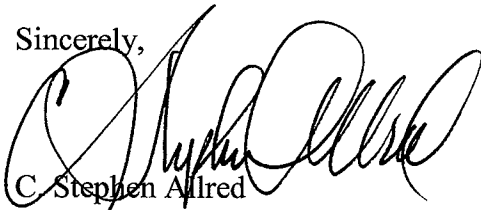
Recommendation 9: The Department of Environmental Quality should monitor fee collections and workloads to determine if the fee schedule should be adjusted either up or down.

DEQ Action—Fee Monitoring: **Implemented.** The new fee structure for PTCs and Tier II Operating Permits took effect on July 1, 2002. The Department has tracked revenues and costs associated with review and issuance of these permits.

As noted in our January 2003 response to the Office of Performance Evaluations, annual revenues from these permit fees are expected to be between \$150,000 and \$200,000. During FY03, when Idaho was experiencing an economic slowdown, fees totaled \$131,000. To date, for FY04, fees have totaled \$142,500. As a result, permit fee revenues, in concert with other funding sources, are adequate to maintain the permitting program.

The Department appreciates the opportunity to provide information in follow-up to the initial report. If you or your staff have a need for further information, please contact Martin Bauer, Administrator of the Air Quality Division, or me.

Sincerely,



C. Stephen Allred
Director

CSA:JS:MB:PCN

c: Martin Bauer, Air Quality Division
Pat Nair, Air Quality Division

Corrigendum

Following submission of its implementation update letter on April 6, the department made a minor modification to its comments on Recommendation #7. The second sentence of the department's response to that recommendation should read:

“In some cases, the technical accuracy and completeness of the application, and the complexity of the proposed project can sometimes negatively affect permit timeliness.”

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